IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1944.

Number 831

STELLA T. RAMBO et al.,
Petitioners,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Fifth Circuit

and

BRIEF IN SUPPORT.

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Cases Cited.

Statutes Cited.

Textbooks Cited.

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To the United States Circuit Court of Appeals for the Fifth Circuit.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Mrs. Stella T. Rambo; Holland Realty Company, a corporation; Mrs. Regina Rambo Benson, Executrix of the Estate of Dr. W. E. Benson and guardian of her minor children, Warren Benson and Regina Anne Benson; Mrs. Lucien Lamar Knight; Dr. Dan Y. Sage; John M. Berry; William Tate Holland, Executor of the Estate of Mrs. Mary T. Holland; George M. Brown, Executor of the Estate of George M. Brown, Jr.; Security Trust Company, Administrator; Lindsey Hopkins, Sr.; Mrs. Stewart Shaw, formerly Northcutt; Steve White; Dr. L. H. Muse; George N. Lemmon;

F. C. Lewis; L. Roy Collins; Mrs. M. M. Parks; J. W. Hutchinson, Executor of the Estate of Mrs. John W. Hutchinson; J. L. Vickery; Mrs. J. A. Metcalf; Mrs. H. S. Willingham, sole heir of H. S. Willingham; Roy McCleskey; H. Y. McCord; Citizens and Southern National Bank, Executor; W. B. Hamby, and Marian Kingdon, respectfully pray that a writ of certiorari issue to review the final judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered November 14, 1944 (R. 170), sustaining the judgment of the District Court of the United States for the Northern District of Georgia (R. 56).

STATEMENT OF THE CASE.

The opinion of the Circuit Court of Appeals (R. 170) has not yet been reported. The opinion and judgment of the court below, not reported, appear in the record, pages 46-56, inclusive.

JURISDICTION.

The judgment of the Circuit Court of Appeals sought to be reviewed was entered on November 14, 1944, and the mandate was stayed for sixty days ~~thereafter~~ November 24, 1944. The jurisdiction of this Court is given by **Judicial Code, Section 240, U. S. Code, Title 28, Section 347.**

THE STATUTES INVOLVED.

The United States brought a condemnation proceeding for the land involved in this cause under **United States Code, Title 40, Sections 257, 258,** permitted under the **Georgia Code, Sections 36-1101 to 36-1116.**

Jurisdiction in this partition suit is granted by **Subsection 25 of Section 41 of Title 28, United States Code,** and authorized by **Georgia Code Sections 85-1501 ff.**

SUMMARY STATEMENT.

The common source of title of the land involved in this cause is the Kennesaw Mountain Battlefield Association, a corporation. That Association deeded the land in trust to secure a certain bond issue, and for the use and benefit of the holders of such bonds in proportion to their respective holdings. This deed was foreclosed, and the title decreed out of the Association, leaving the equitable title in the Trustee. Under the Statute of Uses in Georgia, **Code** of Georgia 108-112, 108-114, the equitable title in the Trustee was made a legal title in the beneficiaries of the trust. Petitioners in this cause owned about 96% of the bonds, and by virtue thereof became the owner of 96% of the title.

The United States filed a condemnation suit to condemn the title to all of the property. In this condemnation suit, the plaintiffs below, petitioners here, were neither sued nor served, although respondent claims they were included in a class bill, and also served by publication.

After the condemnation proceedings brought by the United States, in which it obtained, as is conceded, the title of those bondholders sued and served, the petitioners here asked leave to intervene, to set up title to their portion of the land. This petition to intervene was denied by the District Court, and an appeal taken to the Circuit Court of Appeals. In the Circuit Court of Appeals, **Rambo v. United States, 117 Fed. (2) 792**, the Court, holding that the right to intervene was within the discretion of the trial court said:

> "We do not pass upon the merits * * * if we assume, as appellants contend, that they were the owners of the land and not represented in the suit, they have not been deprived of any rights they possess, for the judgment in the condemnation case would not be binding as to them."

Petitioners, acting on the statement of the Court of Appeals that they were not deprived of their rights by a suit to which they were not parties, and recognizing that the United States did own some 4% of the lands, filed this partition suit in equity, in which they asked for partition, and in view of the fact that the land could not be partitioned in kind, that the court of equity sell the land and distribute the funds among the respective owners. (See **Georgia Code, 85-1501, ff.)**

When the United States had been served with this partition suit, they filed a motion to dismiss on the ground,

> "* * * because the complaint fails to state a claim against this defendant upon which the relief prayed for can be granted" (R. 19).

A supplemental motion was later filed by the United States on the ground that the Court was without jurisdiction in that the title and possession of the land had been acquired by virtue of the condemnation proceedings, and that the United States under the condemnation decree had taken possession (R. 21). These motions were overruled by the District Judge, who gave as a reason therefor that the motion to dismiss "was not the proper remedy under the averments of the petition" (R. 47).

The trial Judge, after the parties had stipulated the facts, and after a hearing thereon, dismissed the bill for partition, saying:

> "The complaint in this case fails to establish under the Federal law a proceeding for partition in equity and plaintiff's remedy is to prosecute their claims in the Court of Claims as provided by statute (Hurley v. Kincaid, 285 U. S. 95).
>
> "Since plaintiffs have a plain, adequate and complete remedy at law and the present proceeding is not a proceeding in equity for partition and the United States have not consented to be sued therein, the bill must be dismissed" (R. 55, 56).

The facts were stipulated, and both the trial court and the Court of Appeals refused to consider any other than the question of jurisdiction, which is the question presented here.

THE DECISION OF THE CIRCUIT COURT OF APPEALS.

The opinion of the Circuit Court of Appeals is brief, and after affirming the lower court on the ground that no partition suit lies where the defendant in partition files an answer setting up a claim of possession and title for the land, said:

> "It is unnecessary to discuss the other questions involved, * * *"

See this opinion, R. 170.

QUESTIONS PRESENTED.

While there are questions undecided, the facts are undisputed, and so far as the decision of the Circuit Court of Appeals goes, the only issue here is:

> **Where Jurisdiction to Partition in Equity Exists, and the Allegations Are That the Plaintiffs and the United States Are Tenants in Common, Is Such Jurisdiction Lost Because the United States Pleads That Under the Decree of Condemnation It Obtained Title and Took Possession of the Land Sought to Be Partitioned?**

Subordinate to this question, is the question:

> **When Equity Has Taken Jurisdiction of a Proceeding, Is That Jurisdiction Taken Away Where Defendant, Relying on the Judgment Claimed to Be Void, Denies Plaintiff's Title?**

REASONS FOR GRANTING THE WRIT.

1. **The Circuit Court of Appeals Decided an Important Question of Federal Law in a Manner Which Conflicts With the Applicable Decisions of This Court and With the Decisions of the Circuit Courts of Appeals of Other Circuits, and With the Decisions of Most, If Not All, of the States of the Union.**

(a) It is an established rule in equity that when equity has taken jurisdiction of a cause it will retain such jurisdiction and do full equity, even if called upon in the course of so doing to determine legal rights. A leading case on this point is that of **McGowen v. Parrish, 237 U. S. 285,** and as the principle is so universally accepted and so well known to the Court, further cases on this point will not be cited here.

(b) The Circuit Court of Appeals disregarded many decisions of this Court in holding that where the petition shows jurisdiction, that jurisdiction is lost by a denial of the allegation of the petition.

(c) The Circuit Court of Appeals failed to follow the rule that when any party, including the United States, comes into Court and relies upon a judgment therein rendered, it has so far consented as to permit the same court to determine the validity and meaning of the judgment under which the United States claims. See, as typical of this line of decisions: **Taylor v. Leesnitzer, 37 App. D. C. 358; Goddman v. Redd, 34 App. D. C. 521; Williams v. Payne, 7 App. D. C. 143,** and numerous state cases, of which three are typical: **Griffin v. Griffin, 33 Ga. 107; Griffin v. Griffin, 153 Ga. 547; Pillow v. Southeastern etc. Improvement Company, 92 Va. 144.**

In **The Siren v. United States, 7 Wall. 152, 154**, where this Court said:

> "When the United States institute a suit they waive their exemption so far as to allow a presentation by the defendant of set-offs, legal and equitable * * * they then stand in such proceedings with reference to the rights of defendant and claimant precisely as private suitors, except they are free from costs and affirmative relief against them beyond demand of property in controversy."

We do not here cite other cases which could be cited to the same effect.

(d) The Circuit Court of Appeals erred in holding that the suit brought by petitioners was not maintainable because there was a claim of title contrary to the allegations in the complaint. Even if the answer raised a question for a court of law, which it does not because the facts were stipulated, the Court should have followed the general chancery rule which permits a court of equity to refer a question which may arise in an equitable proceeding to a jury where the facts are in issue, or decide for itself where the facts are undisputed. The question of so submitting the issue of law, if one arose, is not a jurisdictional, but a procedural question. (See **Burt v. Hellyar, L. R. A., 15 Eq. 160; Krippendorf v. Hyde, 110 U. S. 276; Story, Equity Pleadings, Sections 426, 427.)**

2. **The Question Decided by the Circuit Court of Appeals for the Fifth Circuit Is One of General Importance, in That It Relates to the Construction of a Federal Statute, the Application of the Due Process Clauses of the Constitution, and a Determination of Whether or Not the United States, Without Service on All the Owners, Can, by Serving Part Thereof and Pleading That They Thus Got Title to All the Property, Prevent Any Relief to the Owners Not Sued or Served.**

Wherefore, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit should be granted, and the judgment of that Court revised and reversed.

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